

CAPANA SWISS ADVISORS AG vs RYMARK
MARTIN FASSER HEEG - 11/26/2024

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1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF UTAH
3
4 CAPANA SWISS ADVISORS)
AG, a Swiss corporation;) **CERTIFIED COPY**
5 AMERIMARK AUTOMOTIVE AG,)
a Swiss corporation;)
6)
Plaintiffs,) Case No. 2:23-cv-0046-TS-CMR
7)
vs.) Judge Ted Stewart
8)
RYMARK, INC., a Utah) Magistrate Judge:
9 corporation; NICHOLAS) Cecilia M. Romero
THAYNE MARKOSIAN, an)
10 individual; JOHN)
KIRKLAND, an individual;)
11 and VICKKY SMALL, an)
individual,)
12)
Defendants.)
13)

14
15 DEPOSITION OF
16 MARTIN FASSER HEEG
17 KUNZLER BEAN & ADAMSON
18 SALT LAKE CITY, UTAH
19 NOVEMBER 26, 2024
20
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22
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25

1 APPEARANCES OF COUNSEL:

2 FOR PLAINTIFFS:

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4 VENABLE, LLC
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9 FOR DEFENDANTS:

10 Stephen Richards
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16 ALSO PRESENT:

17 John Golze, Interpreter
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25

1 Q. And you own that jointly with your wife; is
2 that correct?

3 A. No. My wife owns a hundred percent.

4 Q. Your wife owns it. And it employs you; is
5 that right?

6 A. Correct.

7 Q. Does it have other employees?

8 A. Three, yes.

9 Q. Aside from your employment with
10 Heeg Treuhand, do you have employment or positions at
11 any other companies?

12 A. There is a -- well, actually it's not an
13 employment. Position, I am -- we own a second company
14 that provides a similar service which we bought, but we
15 don't have salary there. We just transfer it to
16 Heeg Treuhand.

17 Q. Aside from those two, any others?

18 A. I'm on various boards.

19 Q. Are you on the board of AmeriMark Automotive?

20 A. Yes.

21 Q. And what's your title there?

22 A. I'm now the chairman of the board. Or,
23 technically, I'm the only board member, so --

24 Q. Are you --

25 A. -- is not relevant.

1 Q. Are you also on the board of the
2 Amerimark Group?

3 A. Yes.

4 Q. Are you the chairman of the board there as
5 well?

6 A. Yes.

7 Q. Are there any other board members there?

8 A. No.

9 Q. Do you have a position with Capana Swiss
10 Advisors?

11 A. No.

12 Q. I think you said you're a director of other
13 companies besides AmeriMark Automotive and
14 AmeriMark Group; is that right?

15 A. Right.

16 Q. Do you have a ballpark figure of how many
17 that might be?

18 A. 12. 10, 12.

19 MR. RICHARDS: I'm going to ask that the reporter
20 mark this. I have to look up where we are. Let's
21 start at D-70. D-7-0.

22 (Exhibit D-70 marked.)

23 Q. (BY MR. RICHARDS) The way that exhibits will
24 work in this case is that the reporter will mark an
25 exhibit, and then she'll hand it to, you'll refer to

1 Q. And at this time there were only two people
2 on the board, so the two people would have needed to be
3 you and Mr. Colshorn; correct?

4 A. Correct.

5 Q. But you don't remember whether you had joint
6 or single signature authority?

7 A. Correct. I cannot say for sure.

8 Q. And single signature authority just means, of
9 course, that either one of you could legally bind the
10 company?

11 A. Correct.

12 MR. RICHARDS: We'll mark Exhibit D-77.

13 (Exhibit D-77 marked.)

14 Q. (BY MR. RICHARDS) So you have in front of you
15 Exhibit D-77. Do you see that this is an email chain
16 dated February 23, 2023?

17 A. Yes.

18 Q. So let's start with the earliest email in the
19 chain which will be at the bottom of the page.

20 A. Yeah.

21 Q. Do you see that this email is from Shaen
22 Bernhardt to you?

23 A. Yes.

24 Q. And Mr. Bernhardt writes "Good afternoon,
25 Martin. There is phrase in English, baptism by fire,

1 A. No. I was not present.

2 Q. Do you know whether AmeriMark Group held
3 annual general meetings in each of the last, say,
4 five years?

5 A. No, I would not.

6 Q. Same question for AmeriMark Automotive, same
7 answer?

8 A. Same answer.

9 MR. RICHARDS: We've gone for a while. Are you
10 ready for a break?

11 MR. WORDEN: All right.

12 THE WITNESS: Yes. I think my voice can do with
13 tea.

14 (Recess taken from 11:53 a.m. to 12:11 p.m.)

15 MR. WORDEN: I was served earlier this morning
16 with a summons on a third-party Complaint against
17 AmeriMark Group AG or A-G. Mr. Fasser Heeg and I are
18 not legally authorized to accept service on behalf of
19 AmeriMark Group AG or A-G. Thank you.

20 MR. RICHARDS: And I'll just state for the record
21 that we dispute that. That will be delivered today.

22 MR. WORDEN: That's all right.

23 MR. RICHARDS: Welcome back, Mr. Fasser. I would
24 like to mark D-85.

25 (Exhibit D-85 marked.)

1 A. No.

2 Q. Have you ever met him?

3 A. Nien. No. Sorry.

4 Q. Even I understood that.

5 The next name is your name; correct?

6 A. Correct.

7 Q. And the role that's here is having right to
8 sign. I assume that's the signatory authority you were
9 discussing earlier; is that right?

10 A. Correct.

11 Q. And his name is crossed out because this was
12 your former role; correct?

13 A. Correct.

14 Q. What does the 7m mean next to that?

15 A. 7m is -- well, the 7 is the same date as
16 above and the M, it's always -- there must be a
17 footnote explaining a M, but I don't see it.

18 Q. That's okay.

19 A. I don't know. I don't know what the M means.

20 Q. That's okay. I was only curious.

21 And the new role is member of the board;
22 correct?

23 A. Correct.

24 Q. And you also have individual signing
25 authority?

1 A. Correct.

2 Q. Anyone else have signing authority for
3 AmeriMark Group?

4 A. No.

5 Q. Nobody else has any employment position with
6 AmeriMark Group; correct?

7 A. Correct.

8 Q. No other personnel whatsoever?

9 A. Correct.

10 Q. Does AmeriMark Group have an authorized agent
11 for service?

12 A. What is that?

13 Q. Okay. If you don't know, that's fine. You
14 know, Mr. Worden, your attorney, just put a statement
15 on the record that neither he nor you is authorized to
16 accept service of a Complaint on behalf of
17 AmeriMark Group. You heard him say that; correct?

18 A. What?

19 Q. I'll start over. So at the beginning of this
20 session Mr. Worden made a statement on the record that
21 neither he nor you is authorized to accept service of
22 the third-party Complaint on behalf of AmeriMark
23 Group AG; correct?

24 A. Correct.

25 Q. You heard him say that?

1 A. Yes.

2 Q. And is that true what he said?

3 A. Yes.

4 Q. So who is authorized to accept service of the
5 Complaint on behalf of AmeriMark Group?

6 MR. WORDEN: Calls -- calls for a legal
7 conclusion. You can go ahead.

8 THE WITNESS: Well, my understanding is in
9 Switzerland there is a different process. It has to go
10 through a Swiss Court.

11 MR. RICHARDS: Okay.

12 THE WITNESS: And there is no Swiss Court in Utah.

13 Q. (BY MR. RICHARDS) But you're the only natural
14 person, by which I mean a real person like us --

15 A. Yes.

16 Q. -- that has any association with
17 AmeriMark Group; correct?

18 A. Correct.

19 Q. And you're an officer of AmeriMark Group?

20 A. Correct.

21 Q. And a director of AmeriMark Group?

22 A. Correct.

23 Q. And you act as AmeriMark Group's agent for
24 other purposes; correct?

25 A. Again, can you explain agent.

1 STATE OF UTAH)
) ss.
2 COUNTY OF SALT LAKE)

3 REPORTER'S CERTIFICATE

4 I, Amanda Richards, certified shorthand reporter
5 for the State of Utah, certify:

6 That the deposition of the witness herein was
7 taken before me at the time and place herein set forth,
8 at which time the witness was by me duly sworn to
9 testify the truth; that the testimony of the witness
10 and all objections made and all proceedings had of
11 record at the time of the examination were
12 stenographically reported and transcribed by me.

13 That the foregoing transcript, as transcribed by
14 me, is a full, true and correct record of my
15 stenographic notes so taken; that review of the
16 transcript by the witness was requested pursuant to
17 Rule 30(e) of the Utah Rules of Civil Procedure.

18 I further certify that I am neither counsel for
19 nor related to any party to said action, nor in anywise
20 interested in the outcome thereof.

21 IN WITNESS WHEREOF, I have subscribed my name
22 below this 5th day of December 2024.

23 Amanda Richards

24 Amanda Richards, CSR
25